

Serial No. 09/973,081  
Page 4 of 8

### **REMARKS**

This response is intended as a full and complete response to the non-final Office Action mailed November 30, 2006. Claims 1-13 are pending in the application of which claims 1-10 are withdrawn from consideration and claims 11-13 are rejected. By this response, Applicants have cancelled claims 1-10 in acknowledgement of the restriction requirement and amended claims 11 and 13.

In view of the above amendments and the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicants believe that all of these claims are now in allowable form.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response including amendments.

Applicants traverse all of the rejections in the non-final Office Action and respectfully request reconsideration and passage of the claims to allowance for the following reasons.

### **I. ELECTIONS/RESTRICTIONS**

The Applicant acknowledges the election of claims 11-13 and cancels claims 1-10 without prejudice. The Applicants preserve the right to file one or more continuation or divisional applications to pursue prosecution of the non-elected claims 1-10.

### **II. REJECTION OF CLAIMS 11-13 UNDER 35 U.S.C. §103**

#### **A. Claim 11**

The Examiner has rejected claim 11 under 35 U.S.C. §103 as being unpatentable over Hendricks et al. (5,600,573, hereinafter "Hendricks") in view of Kenner et al. (5,956,716, hereinafter "Kenner") and Campanella (5,864,546, hereinafter "Campanella").

525099-1

Serial No. 09/973,081

Page 5 of 8

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Thus, it is impermissible to focus either on the "gist" or "core" of the invention, Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 USPQ 416, 420 (Fed. Cir. 1986) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The combination of Hendricks, Kenner and Campanella fails to teach or suggest Applicant's invention as a whole.

Claim 11 recites:

11. A method for acquiring and delivering content, comprising:
  - receiving a content download request from a user terminal;
  - determining if the request is a local download request or a remote download request;
  - if the request is a remote download request, determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises bypassing an aggregator; and
  - if the content is to be delivered directly:
    - establishing a communications link from a remote content server to the user terminal, thereby bypassing an aggregator,
    - forwarding the requested content toward the user terminal,
    - validating the delivery of the content to the user terminal, and
    - logging the validated delivery in one of a local server database and a remote server database.

Hendricks fails to teach or to suggest a method for acquiring and delivering content comprising determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises bypassing an aggregator and if the content is to be delivered directly establishing a communications link from a remote content server to the user terminal, thereby bypassing an aggregator, as positively recited by Applicants' independent claim 11. The Examiner concedes this in the Office Action. (See Office Action, p. 3, ll. 4-9.) However, the Examiner then alleges that Kenner and Campanella bridge the substantial gap left by Hendricks.

525099-1

Serial No. 09/973,081  
Page 6 of 8

Applicants respectfully submit that Kenner and Campanella fail to bridge the substantial gap between Hendricks and Applicants' invention because Kenner and Campanella also fail to teach or suggest a method for acquiring and delivering content comprising determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises bypassing an aggregator and if the content is to be delivered directly establishing a communications link from a remote content server to the user terminal, thereby bypassing an aggregator.

In particular, Kenner discloses a system and method for delivery of video data over a computer network. Kenner only discloses determining if the content is to be delivered on an alternate route and not directly or indirectly. (See Kenner, col. 12, ll. 42-55.) Kenner teaches, that if a particular SRU is busy supporting other users via DSI 30, PIM may create a remote DSI 42. (See *Id.*) In other words, the download processes takes an alternate path. In both cases, the download process goes through an identical number of modules (i.e. a SRU and DSI). (See *Id.*)

In contrast, Applicants' invention teaches determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises bypassing an aggregator and if the content is to be delivered directly establishing a communications link from a remote content server to the user terminal, thereby bypassing an aggregator. In other words, Applicants' invention defines "directly delivering content" as bypassing a module, e.g. an aggregator. Consequently, fewer modules are traversed and content may be delivered more quickly and efficiently.

Campanella discloses a system for formatting broadcast data for satellite transmission and radio reception. Campanella also fails to teach or suggest determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises bypassing an aggregator and if the content is to be delivered directly establishing a communications link from a remote content server to the user terminal, thereby bypassing an aggregator. Therefore, because not all the limitations of claim 11 are taught or suggested, for at least the above reasons, Applicants submit that independent claim 11 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder.

Therefore, Applicants respectfully request that the rejection be withdrawn.

525099-1

Serial No. 09/973,081

Page 7 of 8

**Claims 12-13**

The Examiner has rejected claims 12-13 under 35 U.S.C. §103(a) as being unpatentable over Hendricks, Kenner, and Campanella as applied to claim 11 above, and further in view of Wilkins (5,446,919, hereinafter "Wilkins").

Each of the grounds of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. §103 for independent claim 11. Since the rejection of the independent claim 11 under 35 U.S.C. §103 has been overcome, as described hereinabove, and there is no argument set forth by the Office Action that any other additional references supply that which is missing from Hendricks, Kenner and Campanella to render the independent claim 11 unpatentable, these grounds of rejection cannot be maintained. Accordingly, these dependent claims also are non-obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder.

Therefore, Applicants respectfully request that the rejection be withdrawn.

Serial No. 09/973,081  
Page 8 of 8


**CONCLUSION**

Thus, Applicants respectfully submit the pending claims are in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 2/23/07

  
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